

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ARTHUR PORTER,

Petitioner,

Case No. 04-CV-71350-DT
HON. AVERN COHN

v.

MARY BERGHUIS,

Respondent,

_____ /

ORDER REOPENING TIME TO FILE NOTICE OF APPEAL

I.

This is a habeas case under 28 U.S.C. § 2254. On August 23, 2005, this Court denied Petitioner's application, finding his claims to be without merit. See Porter v. Berghuis, 2005 WL 2063946 (E.D. Mich. Aug. 23, 2005). Petitioner appealed. The Court of Appeals for the Sixth Circuit affirmed. Porter v. Berghuis, No. 05-2531 (6th cir. March 14, 2007). Petitioner then filed a paper styled "Motion for Relief from Judgment to Reinstate Habeas Claim #6 Pursuant to FRCP 60(b). The Court denied the motion for lack of merit. See Order filed April 9, 2007. Petitioner filed a motion for reconsideration, which was denied. See Order filed April 25, 2007.

Before the Court is Petitioner's paper styled "Objection to Entry of Order Without Notice." Petitioner contends that did not receive a copy of the Court's April 25, 2007 Order denying his motion for reconsideration and was not aware of entry of the order until he received a copy of the docket sheet after a request to the Clerk in a letter dated July 13, 2007.

II.

Petitioner first requests a copy of the Court's Order April 25, 2007 Order. A copy is enclosed.

Petitioner also requests that the time for filing an appeal be tolled until he receives a copy of the Order. Under Fed. R. App. P. 4(a)(1), Petitioner had 30 days from the date of judgment to file an appeal. In this case, Petitioner had until May 25, 2007 to file an appeal of the order denying his motion for reconsideration. Fed. R. App. P. 4(a)(6), however, indicates that a district court may reopen the time to file an appeal for a period of fourteen days (14) after the date when its order to reopen is entered, so long as the following conditions are satisfied:

(A) The motion to reopen is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice of the entry, whichever is earlier;

(B) The court finds that the moving party was entitled to notice of the entry of the judgment or order sought to be appealed but did not receive the notice from the district court or any party within 21 days after entry;

(C) The Court finds that no party would be prejudiced.

With respect to subsection (B), Petitioner indicates that he did not receive notice of the entry of the Court's April 25, 2007 until after his July 13, 2007 request to the Clerk for a copy of the docket sheet. The record is silent as to whether a copy of the Court's April 25, 2007 order was ever in fact mailed to Petitioner. The Court finds that Plaintiff did not receive notice of the order before July 27, 2007, the date of his objections. Thus, subsection (B) is satisfied because Petitioner did not receive notice of the entry of the order until more than 21 days after its entry.

With respect to subsection (A), this is also satisfied because Petitioner filed his

objections within 180 days of the April 25, 2007 order and within 7 days of receiving notice of entry of the order.

With respect to subsection (C), Petitioner has not addressed the issue of prejudice. However, the Court finds that Respondent would not be prejudiced by the reopening of the time to file an appeal. This is particularly so because Respondent was not requested, nor required, to respond to Petitioner's Motion for Relief from Judgment or his Motion for Reconsideration.

Petitioner shall have **fourteen (14) days** from the date of this Order in which to file a notice of appeal of the Court's April 25, 2007 order.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: August 7, 2007

I hereby certify that a copy of the foregoing document was mailed to the counsel of record and Arthur Porter, 339222, Brooks Correctional Facility, 2500 South Sheridan Road, Muskegon Heights, MI 49444 on this date, August 7, 2007, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160